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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

YANIV GRINBERG et al., Plaintiffs and Respondents, v. MARIA'S HOLDING CORPORATION, Defendant and Respondent; MICHAEL VINCZE, Objector and Appellant.	B244535 (Los Angeles County Super. Ct. No. BC445579)

APPEAL from a judgment of the Superior Court of Los Angeles, William F. Highberger, Judge. Affirmed.

George Hakim for Objector and Appellant Michael Vincze.

Eli M. Kantor for Plaintiffs and Respondents Yaniv Grinberg, Anthony Astorino and Cory Miles.

Van Vleck, Turner & Zaller, Brian F. Van Vleck, Daniel J. Turner, Anthony J. Zaller and Farinaz Tojarieh for Defendant and Respondent Maria's Holding Corporation.

Appellant Michael Vincze challenges the judgment entered in the underlying class action pursuant to a settlement, as well as the trial court's ruling that he lacked standing to object to the settlement because his objection was untimely. We conclude that Vincze has standing on appeal solely to contest the ruling regarding his objection to the settlement, and reject his contentions concerning that ruling. We therefore affirm the ruling, and dismiss the remainder of Vincze's appeal.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. *Underlying Class Action and Related Actions*

On September 15, 2010, respondents Yaniv Grinberg, Anthony Astorino, and Cory Miles (Grinberg parties) initiated the underlying class action (Grinberg action) against respondent Maria's Holding Corporation, d.b.a. Maria's Italian Kitchen (MIK). The Grinberg parties filed the action on behalf of themselves and a putative class of individuals whom MIK employed, or had employed, as delivery drivers. Alleging that MIK had misclassified the delivery drivers as independent contractors, the complaint asserted claims for violations of the Labor Code regarding the provision of minimum wages, meal and rest periods, and related matters, and unfair business practices.[1] The complaint sought to recover unpaid compensation and certain statutory penalties, but made no claim for penalties

[1] The Grinberg parties' complaint contains claims for failure to pay minimum wages (Lab. Code, § 1197, failure to reimburse for the cost of pizza bags and hats (Lab. Code, § 2802), failure to reimburse for mileage (Lab. Code, § 2802), failure to provide meal periods (Lab. Code, § 226.7), failure to provide rest periods (Lab. Code, § 226.7), failure to provide itemized wage statements (Lab. Code, § 226), failure to pay wages upon termination (Lab. Code, 203), and unlawful business practices (Bus. & Prof. Code, § 17200).

under the Labor Code Private Attorneys General Act of 2004 (PAGA; Lab. Code, § 2698 et seq.).[2]

On June 27, 2011, Julian D. Hakim filed an action against MIK on his own behalf, alleging that he had worked as a delivery driver for MIK (Hakim action). He asserted claims similar to those asserted in the Grinberg action, and sought damages, restitution, and specified statutory penalties (Lab. Code, § 203).[3] His original and first amended complaints made no claims for penalties under PAGA.

In July 2011, following discovery and a mediation, the Grinberg parties and MIK reached a settlement agreement regarding the Grinberg action, pending the trial court's approval. Under the agreement, the parties certified a specified class of MIK delivery drivers who had been classified as independent contractors. MIK agreed to pay a maximum of $350,000, inclusive of attorney fees, in exchange for a release of the class members encompassing all claims and causes of action that were raised, or could have been raised, under state and federal law. Although the complaint contained no PAGA claims, the agreement expressly provided that MIK was not liable for any penalties under PAGA. In addition, the agreement stated that class members "waive[d] any potential right to any penalty prescribed by the PAGA."

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[2] PAGA permits aggrieved employees to recover certain statutory penalties that previously could be collected only by the Labor and Workforce Development Agency. (*Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 335.)

[3] Hakim's original and first amended complaints, filed June 27, 2011 and July 8, 2011, contained claims for failure to provide meal periods (Lab. Code, §§ 226.7, 512, 558), failure to pay for missed meal periods (Lab. Code, § 226.7), failure to provide rest periods (Lab. Code, § 226.7), failure to pay for missed rest periods (Lab. Code, § 226.7), failure to keep payroll records (Lab. Code, § 1174), failure to provide accurate statements of hours worked (Lab. Code, § 226), and unlawful business practices (Bus. & Prof. Code, § 17200).

At some point after the Grinberg parties and MIK reached the settlement agreement, Hunter Stratton, a former MIK delivery driver, filed a class action complaint containing claims similar to those asserted by the Grinberg parties, as well as claims under PAGA (Stratton action). In addition, on September 28, 2011, Hakim filed a seconded amended complaint in his action, which included claims under PAGA. Later, in November 2011, Joey Harter and William Altomare filed an action against MIK on their own behalf, alleging that they had worked as delivery drivers for MIK. They asserted claims similar to those in Hakim's second amended complaint, and requested penalties under PAGA.[4]

In early 2012, after Hakim's action was ordered consolidated with Harter and Altomare's action, the three plaintiffs filed a joint complaint, which included claims under PAGA (consolidated Hakim action).[5] The Grinberg, Stratton, and consolidated Hakim actions were assigned to a single judge, who determined them to be related.

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[4] Harter and Altomare's complaint, filed November 21, 2011, contained claims for failure to provide meal periods (Lab. Code, §§ 226.7, 512), failure to pay for missed meal periods (Lab. Code, § 226.7), failure to provide rest periods (Lab. Code, § 226.7), failure to pay for missed rest periods (Lab. Code, § 226.7), failure to provide accurate statements of hours worked (Lab. Code, § 226), and unlawful business practices (Bus. & Prof. Code, § 17200). In addition, the complaint sought statutory penalties, including penalties under PAGA.

[5] The joint complaint, filed March 12, 2012, asserted claims for failure to provide meal periods (Lab. Code, §§ 226.7, 512), failure to pay for missed meal periods (Lab. Code, § 226.7), failure to provide rest periods (Lab. Code, § 226.7), failure to pay for missed rest periods (Lab. Code, § 226.7), failure to provide accurate statements of hours worked (Lab. Code, § 226), and unlawful business practices (Bus. & Prof. Code, § 17200). In addition, the complaint sought statutory penalties, including penalties under PAGA.

B. *Initial Proceedings Regarding Approval of Settlement in the Grinberg Action*

In August 2011, the Grinberg parties filed a motion for preliminary approval of the proposed settlement of their action. In November 2011, the trial court granted the motion, certified the class for purposes of settlement, approved the proposed notice regarding the settlement, and appointed a class administrator to distribute the notice and related documents (collectively, the class notice) to the known members of the class. The class notice stated that any class member who did not request to "[o]pt [o]ut" of the settlement released "any and all . . . claims" against MIK under California or federal law, but did not specifically refer to claims under PAGA. The class notice further stated that class members who wished to opt out or object to the settlement were required to do so by January 12, 2012.

On March 1, 2012, the Grinberg parties filed a motion for final approval of the settlement. Supporting the motion was a declaration from the claims administrator, who stated that on December 5, 2011, the class notices and related documents were mailed to the 265 known members of the class at their last known addresses, as shown by MIK's records. According to the claims administrator, only 13 "opt out" notices had been received, of which 2 were untimely and 8 were invalid for other reasons. The Grinberg parties noted that only Stratton had filed a timely objection to the settlement, arguing that the settlement was inadequate, that the release was broader than the claims pled in the Grinberg action, and that the class notice was inadequate.

On March 8, 2012, at a fairness hearing on the settlement, the trial court deferred its ruling regarding the final approval of the settlement, and afforded Stratton an opportunity to establish that he needed to conduct discovery related to

his objections.[6] Shortly afterward, on March 12, 2012, Hakim, Arter, and Altomare filed an objection to the settlement, contending that they never received timely notice of the settlement, that the settlement funds were inadequate, and that the class notice failed to disclose the existence of the consolidated Hakim action, which asserted claims under PAGA.

C. *April 11, 2012 Hearing*

On April 11, 2012, at a fairness hearing on the settlement, attorney George Hakim appeared on behalf of Hakim, Harter, and Altomare, who were not present.[7] Because the three objectors had claimed that they never received timely notice of the settlement, the court stated that it was "troubled" whether the claims administrator had "failed in his enterprise," and suggested holding an evidentiary hearing to receive testimony from Hakim, Arter, Altomare, and the claims administrator. George Hakim agreed to the proposal.

Later in the hearing, after MIK's counsel argued that it was uncertain whether Hakim, Arter, and Altomare wished to object to the settlement or opt out, the court asked George Hakim to clarify their intentions. George Hakim replied that they "would have to opt out." The court ordered Hakim, Arter, and Altomare to file documents clearly stating their decision, and set a fairness hearing on the settlement for June 11, 2012. At the request of MIK's counsel, the court decided to place the evidentiary hearing "in abeyance," rather than conduct it on June 11, as MIK's counsel noted the possibility of a "global resolution."

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[6] Rule 3.769(g) of the California Rules of Court provides: "Before final approval [of a proposed class settlement], the trial court must conduct an inquiry into the fairness of the proposed settlement."

[7] Because George Hakim and Julian Hakim share a surname, we refer to the former by his full name.

D. *Vincze's Objection and MIK's Response*

On April 20, 2012, Vincze filed an objection to the settlement, contending that he never received a class notice, and thus "never had an opportunity to opt[] out, file his own lawsuit, or file a timely objection." The objection asserted that the proposed settlement funds were inadequate, and that the class notice failed to alert class members to the potential for recovery of PAGA penalties in the consolidated Hakim action.

Supporting the objection was Vincze's declaration, which stated that he was a former employee of MIK and a class member. The declaration further stated: "I only this week became aware of [the Grinberg action] and the subsequent proposed class settlement from a former co-worker. I have not received any notice of [the] class settlement since I have moved from where I resided at the time of my employment with [MIK]. However, since the time I was employed at [MIK] until now I have continuously resided in the San Fernando Valley area and I currently reside in West Hills, California."

In May 2012, Hakim, Arter, and Altomare filed an "opt out" notice regarding the proposed settlement. Later, on June 7, 2012, Daniel J. Turner, MIK's counsel, submitted a declaration in opposition to Vincze's objection. Turner stated that during May 2012, he repeatedly e-mailed George Hakim, Vincze's counsel, requesting information regarding Vincze's address when the class notices were mailed. Turner's declaration noted that Vincze's objection and supporting declaration did not state his address "during the relevant time period." Accompanying Turner's declaration were his e-mails to George Hakim, which explained that the information was needed to establish whether the class notice was sent to the correct address. According to Turner, George Hakim never provided the information, and responded only "that he was unable to get in[to] contact with his client and, therefore, could not obtain his authorization to provide his address."

E. *June 11, 2012 Hearing*

At the June 11, 2012 fairness hearing, the trial court did not rule on Vincze's objection or expressly address whether his objection was untimely, but instead focused on other matters. The court found that Hakim, Arter, and Altomare had opted out, and determined that it was unnecessary to conduct an evidentiary hearing. The court also authorized Stratton to conduct discovery, continued the fairness hearing to August 8, 2012, and permitted Stratton and Vincze to submit further briefing in support of their objections.

F. *August 8, 2012 Hearing*

Vincze filed nothing prior to the August 8, 2012 fairness hearing, and was not present during it. George Hakim appeared on his behalf. At the hearing, the trial court overruled Stratton's objections to the proposed settlement. In addition, the court heard argument regarding whether Vincze had standing to object to the settlement.

At the hearing, the court remarked that the declarations from the claims administrator and Turner had shifted the burden to Vincze to show that he never received the class notice. The court further characterized Vincze's declaration as a "woefully [] inadequate showing," as it disclosed no information regarding Vincze's addresses. George Hakim maintained that Vincze's declaration was sufficient to establish that he never received the class notice, and stated that Vincze was out of town when Turner inquired regarding his address. George Hakim further argued that Turner had "waived" the evidentiary hearing proposed at the April 11, 2012 hearing.

In the course of the argument, the court inquired whether Vincze could appear as a witness on the following Friday. George Hakim replied, "I'll try my best," but did not describe what Vincze might say. The court then remarked:

"There was a time [when] you were supposed to have or could have submitted supplemental papers. You didn't submit anything supplemental. Why didn't you use any of that time to respond to Mr. Turner's declaration . . .? [¶] It's a simple question . . . . If you got the facts on your side you should have been bringing them forward affirmatively." George Hakim replied that Turner's conduct regarding the evidentiary hearing addressing the objections from Hakim, Arter, and Altomare had induced him not to file supplemental documents regarding Vincze's objection. He stated: "I assumed when Mr. Turner waived the . . . June 11[] hearing and you agreed with him, your honor, I assumed it's a done deal. That's why I never filed anything else."

In response, the court remarked that George Hakim's reluctance to "bring [Vincze] forward" made it skeptical regarding Vincze's declaration. Noting that Vincze's declaration "provide[d] absolutely no circumstances [regarding] whether he changed his location or not," the court stated: "[H]is . . . flat conclusory assertion is not probative of anything."

Later, after MIK's counsel argued that Vincze had been given "every opportunity" to provide address information and that he "just doesn't feel . . . like giving the address," the following dialogue occurred:

"[George Hakim]: That is not correct.

"The Court: What is the address?

"[George Hakim]: I don't have it with me."

The court then ruled that Vincze's objection was untimely, stating: "[T]he court finds that the late objector failed to show good cause for the . . . late filed objection. [¶] Therefore, the court finds that he has no standing to object to the settlement and disregards the merits of his objections." In addition, the court approved the settlement in the Grinberg action.

G. *Judgment*

On September 13, 2012, the trial court entered a final judgment approving the class settlement that also referred to the August 8, 2012 ruling regarding Vincze's objection. Vincze noticed his appeal from that judgment.

DISCUSSION

Vincze attacks the judgment and the ruling regarding his objection. As explained below, he has standing on appeal only to challenge the latter. Because we find no error in that ruling, we affirm it, and dismiss the remainder of his appeal.[8]

A. *Scope of Appeal*

At the threshold of our inquiry, we examine the extent to which Vincze has standing to challenge the judgment and ruling regarding his objection. "[O]nly an 'aggrieved party' has a right to appeal." (*Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 754.) Standing to appeal is jurisdictional. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.)

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[8] At our request, the parties provided supplemental briefing regarding whether Vincze's appeal must be dismissed because he noticed it from a judgment that he lacks standing to challenge. We declined to dismiss the appeal, as the September 13, 2012 judgment refers to the August 8, 2012 ruling, which he has standing to challenge, and his notice of appeal was timely with respect to that ruling.

Regarding a related matter, the Grinberg parties contend that Vincze's appeal must be dismissed with respect to them because Vincze never served his notice of appeal on them. Rule 8.100(a)(3) of the California Rules of Court provides: "Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure." No remedy is necessary here, as the Grinberg parties submitted a respondent's brief and have shown no prejudice from Vincze's failure to serve the notice of appeal on them.

Generally, only parties of record to an action have standing to appeal. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736.) "A party of record is a person named as a party to the proceedings or one who takes appropriate steps to become a party of record in the proceedings." (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715.) Under these principles, one who becomes a party to an action through a successful motion to intervene acquires standing to challenge the judgment in the action. (*Corridan v. Rose* (1955) 137 Cal.App.2d 524, 528.) Furthermore, "one who is denied the right to intervene in an action ordinarily may not appeal from a judgment subsequently entered in the case. [Citations.] Instead, he may appeal from the order denying intervention." (*County of Alameda v. Carleson*, *supra*, 5 Cal.3d at p. 736.)

In class actions, an unnamed class member ordinarily lacks standing to challenge the judgment in a class action. (See *Eggert v. Pac. States S. & L. Co.* (1942) 20 Cal.2d 199, 200-201.) However, "[i]n the context of a class settlement, objecting is the procedural equivalent of intervening." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 253.) Thus, unnamed class members who file timely objections or are permitted to present their objections have standing to appeal from the judgment in the action. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 51 (*Chavez*); *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 395-396 (*Consumer Cause*); *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 235-235; *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 138 (*Trotsky*).)

Here, the trial court, in overruling Vincze's objection as untimely, expressly found that he had no standing to challenge the settlement, and disregarded his objection. The issues before us, therefore, concern whether he had standing on appeal to challenge the judgment or the ruling regarding his objection.

We begin with Vincze's standing to appeal from the judgment. Our research has disclosed no California decision squarely addressing that issue. However, regarding issues of standing in class actions, California courts look to federal decisions for guidance. (See *Consumer Cause, supra*, 127 Cal.App.4th at pp. 395-396; *Trotsky*, *supra*, 48 Cal.App.3d at pp. 138-139.) In *In re Integra Realty Res. Inc.* (10th Cir. 2004) 354 F.3d 1246, 1257-1258, the court concluded that when a class member fails to file a timely objection in accordance with the notice of the class settlement and the trial court disregards the objection, the class member lacks standing to appeal from the judgment entered pursuant to the class settlement. Additionally, in *In re UnitedHealth Group Inc. Shareholder Derivative Litigation* (8th Cir. 2011) 631 F.3d 913, 917-918, the court reached a similar conclusion regarding the standing of an unnamed shareholder who files an untimely objection to the settlement of a shareholder derivative action. We therefore conclude that Vincze lacks standing to challenge the judgment on appeal.[9]

The remaining issue concerns Vincze's standing to appeal from the ruling regarding the timeliness of his objection. Generally, when a ruling "in essence"

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[9] Pointing to *Chavez,* Vincze suggests that an unnamed class member who files an untimely objection necessarily has standing to appeal from the judgment. We conclude that *Chavez* stands solely for the proposition that unnamed class members may acquire standing to challenge the judgment by filing *timely* objections. There, an unnamed class member filed an objection to the proposed settlement. (*Chavez, supra,* 162 Cal.App.4th at p. 51.) In addition, she submitted an untimely motion to intervene in the action, arguing that her right to appeal from the judgment would be preserved only if she were permitted to intervene. (*Ibid*.) In affirming the trial court's denial of leave to intervene, the appellate court stated that the motion to intervene had been filed after the deadline established in the class notice. (*Ibid*.) Although the appellate court did not expressly specify that the class member's objection was timely, it also concluded that the motion to intervene lacked merit, stating that "a class member who *timely* objects to a settlement has standing to appeal regardless of whether the member formally intervened in the action." (*Ibid.,* italics added.) In view of this statement, the class member appears to have filed a timely objection.

denies leave to intervene in an action, the aggrieved party may challenge it on appeal, provided that it constitutes a final determination of the party's entitlement to participate in the action. (*In re Veterans' Industries, Inc.* (1970) 8 Cal.App.3d 902, 916; see *Jun v. Myers* (2001) 88 Cal.App.4th 117, 122-123.) That requirement is satisfied here, as the trial court, in overruling Vincze's objection, expressly stated that it disregarded "the merits of his objections." Vincze thus has standing on appeal solely to challenge the ruling regarding his objection. Accordingly, we dismiss his appeal to the extent it is taken from the judgment, and limit our inquiry to his challenges to the ruling regarding his objection. (*Braun v. Brown* (1939) 13 Cal.2d 130, 133.)

B. *Ruling Regarding Vincze's Objection*

Vincze challenges the ruling regarding his objection on two grounds. He maintains that his declaration established that he never received the class notice, and he contends that the trial court denied him due process in issuing the ruling. For the reasons discussed below, we reject both contentions.

1. *There Was Sufficient Evidence to Support the Finding that Vincze Failed to Show Good Cause for His Untimely Objection*

Vincze contends the trial court erred in finding that he did not show good cause for his untimely objection, maintaining that his declaration established that he never received the class notice. We disagree.

Generally, we review the trial court's factual determinations for the existence of substantial evidence. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) In this regard, "the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of

the trier of fact]." (*Ibid*., italics omitted.) Under these principles, we will affirm a factual finding predicated on the trial court's rejection of a witness's testimony, "unless it appears that there are no matters or circumstances [that] . . . impair the accuracy of the testimony . . . ." (*La Jolla Casa de Manana v. Hopkins* (1950) 98 Cal.App.2d 339, 345.) Furthermore, when the underlying evidence consists of declarations, the rule applicable to our review "is the same as that governing oral testimony . . . ." (*Hammel v. Lindner* (1964) 224 Cal.App.2d 426, 431-432.)

Under these principles, a trial court may properly decline to credit statements in a declaration, even though the adverse showing does not directly challenge those statements. In *Tom Thumb Glove Co. v. Han* (1978) 78 Cal.App.3d 1, 3-4 (*Tom Thumb Glove Co*.), a supplier of hand gloves obtained a judgment against a retailer in North Carolina, and initiated an action in California for an enforceable judgment predicated on it. After the enforceable judgment was entered, the retailer sought to have it vacated, contending that the North Carolina judgment was secured through extrinsic fraud. (*Ibid*.) In support of the contention, the retailer and his counsel submitted declarations stating that during the North Carolina proceedings, the supplier's counsel assured them that no judgment would be entered in North Carolina or California. (*Id*. at pp. 4-5.) Although the responsive declaration from the supplier's counsel was silent regarding the purported assurances, the trial court denied the motion to vacate. (*Id*. at p. 4.)

In affirming the ruling on the motion to vacate, the appellate court held that the trial court had a reasonable basis for declining to credit the declarations from the retailer and his counsel. (*Tom Thumb Glove Co*., *supra*, 78 Cal.App.3d at p. 6.) Noting that "'there may be so many omissions in [a declarant's] account . . . as to discredit his whole story,'" the appellate court identified significant gaps in the declarations, including the failure of the retailer's counsel to memorialize the

purported assurances in writing. (*Id*. at p. 5, quoting *La Jolla Casa de Manana v. Hopkins, supra,* 98 Cal.App.2d at pp. 345-346.) The court thus concluded that the declarations were sufficiently "cryptic and unenlightening" to support the trial court's determination. (*Tom Thumb Glove Co*., *supra,* at p. 6.)

A similar issue is presented here. Regarding the circumstances underlying Vincze's purported failure to receive the class notice, his declaration merely stated: "I have not received any notice of [the] class settlement since I have moved from where I resided at the time of my employment with [MIK]. However, since the time I was employed at [MIK] until now I have continuously resided in the San Fernando Valley area and I currently reside in West Hills, California." Turner's responsive declaration did not directly contradict Vinczes's claim that he never received the class notice, but effectively identified two key omissions in Vincze's evidentiary showing. First, although Vincze maintained that he never received the class notice because he had moved from the address in MIK's records, he did not state when he moved from that address or where he was living when the class notice was mailed. Second, George Hakim had not provided that information, despite Turner's repeated requests. At the August 11, 2012 hearing, after noting that the claims administrator had submitted evidence that the class notices were mailed to the addresses known to MIK, the trial court declined to credit Vincze's declaration, stating that his "flat[,] conclusory assertion is not probative of anything."

In view of *Tom Thumb Glove Co*., we find no error in the trial court's determination that Vincze's declaration was not credible. As discussed further below (see pt. B.2, *post*), the evidence before the court showed that Vincze and his counsel repeatedly declined to provide information critical to the assessment of Vincze's claim that he never received the class notice, including when he moved from the address known to MIK and where he resided when the class notices were

mailed. Accordingly, there is substantial evidence to support the trial court's finding that Vincze failed to show good cause for his untimely objection.

2. *There Was No Denial of Notice and an Adequate Opportunity to Present Evidence*

Vincze contends that the trial court abused its discretion "by ruling, without a duly noticed hearing and an opportunity for counsel to prepare and be heard, that [his] objections were untimely." He argues that the trial court never expressly stated that it intended to address his objection at the August 8, 2012 hearing, and instead induced George Hakim to believe that MIK's challenge regarding the objection was resolved at the June 11, 2012 hearing. He thus contends that the court conducted a "surprise evidentiary hearing" on MIK's challenge at the August 8 hearing. (Italics omitted.) He further argues that at the August 8 hearing, the trial court was obliged to order an evidentiary hearing or afford him an opportunity to submit further evidence before ruling on MIK's challenge.

a. Adequate Notice

To begin, we conclude that at the June 11 hearing, Vincze received adequate notice that issues related to his objection would be addressed at the August 8 hearing, including MIK's challenge to the objection. Prior to the June 11 hearing, Vincze filed his objection and supporting declaration, and Turner submitted his responsive declaration. MIK's challenge to Vincze's declaration was thus pending at the June 11 hearing. However, at the June 11 hearing, the trial court made no rulings regarding Vincze's objection. Instead, it continued the fairness hearing to August 8, asked Vincze to submit any further briefs regarding his objection by July 19, and permitted MIK to file a response by July 26. In our view, the trial court's

briefing schedule provided Vincze with adequate notice that he should expect to address MIK's challenge at the August 8 hearing.

Nor did the trial court or MIK's counsel engage in any conduct at the June 11 hearing that George Hakim could have reasonably viewed as resolving MIK's challenge to Vincze's declaration. Vincze argues that because the court ruled at the June 11 hearing that an evidentiary hearing regarding Hakim's, Harter's and Altomare's objections was no longer necessary, and MIK did not object to this ruling, George Hakim reasonably inferred "that the court was satisfied that [Vincze] did not receive [the class notice]." We disagree.

The trial court ordered the evidentiary hearing regarding Hakim's, Harter's and Altomare's objections at the April 11, 2012 hearing, *before* Vincze filed his objection. The evidentiary hearing was thus aimed at potential issues regarding the mailing of the class notice raised by Hakim's, Harter's, and Altomare's objections. At the June 11 hearing, the court found that Hakim, Arter, and Altomare had opted out, and determined that it was unnecessary to conduct an evidentiary hearing at which the claims administrator would appear as the sole witness. In so ruling, the court remarked that because "teens and young adults" were now "highly mobile," the fact that they moved from their parent's home and failed to "methodically check their snail mail . . . doesn't prove there was any problem with the [claims administrator's] notice . . . ."

Nothing in the court's ruling or remarks reasonably constituted a ruling on MIK's challenge to Vincze's objection, and nothing in MIK's conduct reasonably suggested that it had abandoned its challenge. Because Hakim, Harter, and Altomare decided to opt out prior to the June 11 hearing, it is unsurprising that the court decided the evidentiary hearing was no longer necessary, and that MIK did not contest that determination. Furthermore, the court's remarks cannot reasonably be interpreted as addressing MIK's challenge to Vincze's objection, as the court

made no reference to that objection or MIK's challenge to it. Additionally, we note that the court, in ruling that the evidentiary hearing was unnecessary, stated that it had no concerns regarding the adequacy of the claim administrator's conduct that warranted an evidentiary hearing. These remarks cannot reasonably be viewed as suggesting that the court found that Vincze did *not* receive the class notice. In sum, Vincze had adequate notice that MIK's challenge to his objection would be addressed at the August 8 hearing.

b. Adequate Opportunity to Present Evidence

We further conclude that Vincze was afforded an adequate opportunity to present evidence to meet MIK's challenge, as the trial court directed him at the June 11 hearing to submit any additional briefs he wished prior to the August 11 hearing. Generally, trial courts are authorized to resolve motions and similar matters upon the basis of declarations. (*Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 483-485; Code Civil Proc. § 2009.)

At the June 11 hearing, the trial court permitted Vincze to submit additional declarations or other documentary evidence by July 19 to support his original declaration. As George Hakim neither objected to the court's procedural rulings nor requested an evidentiary hearing, Vincze has forfeited any contention that the court erred at the June 11 hearing in determining that the matter was properly resolved upon declarations alone. (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 166 [appellant forfeits the right to attack error by expressly or impliedly agreeing at trial to the pertinent procedure].) Furthermore, because the court allowed Vincze more than six weeks to make a supplemental showing, he was given an adequate opportunity to do so.

Vincze contends that at the August 11 hearing, the trial court was obliged to set an evidentiary hearing or permit him to submit additional evidence, even

though George Hakim never expressly asked for an evidentiary hearing or a continuance to secure more evidence. Vincze argues that George Hakim's willingness to provide him as a witness was sufficient to mandate an evidentiary hearing or a continuance. We disagree.

Generally, the trial court has "broad discretion" to resolve an issue "on the basis of declarations and other documents[,] rather than live, oral testimony." (*California School Employees Assn. v. Del Norte County Unified Sch. Dist.* (1992) 2 Cal.App.4th 1396, 1405.) As our Supreme Court has explained, "[t]here is simply no authority for the proposition that a trial court necessarily abuses its discretion, in a motion proceeding, by resolving evidentiary conflicts without hearing live testimony." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 414.) Ordinarily, a party seeking an evidentiary hearing must provide an offer of proof specifying the evidence to be presented. (See Cal. Rules of Court, rule 3.1306(b) [in requesting evidentiary hearing, party is obliged to state "the nature and extent of the evidence proposed to be introduced."].)

A request for a continuance also is consigned to the trial court's discretion. Generally, "[t]here is no policy in this state of indulgence or liberality in favor of parties seeking continuances. Rather, the granting of continuances is not favored and the party seeking a continuance must make a proper showing of good cause. [Citations.]" (*Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 448.)

In view of these principles, the trial court did not abuse its discretion in refraining from ordering an evidentiary hearing or a continuance to permit Vincze to submit additional evidence. At the August 11 hearing, George Hakim made no offer of proof regarding the testimony that Vincze would provide regarding when he moved from the address known to MIK or where he lived when the class notices were mailed. Indeed, when the court pressed George Hakim for this information, he was unable to provide it, even though MIK had raised its challenge to Vincze's

declaration over two months before the August 11 hearing. As George Hakim failed to state good cause for an evidentiary hearing or a continuance and requested neither, the trial court was not required to order either of them. In sum, we find no error in the trial court's ruling regarding Vincze's untimely objection.

DISPOSITION

The trial court's order overruling Vincze's objection as untimely is affirmed. Vincze's appeal from the judgment approving the class settlement is dismissed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.